

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
AMARILLO DIVISION

UNITED STATES OF AMERICA	§	
	§	
v.	§	2:14-CR-0027
	§	
JAVIER MONTANA-PANDO	§	

**REPORT AND RECOMMENDATION TO DENY**  
**DEFENDANT'S MOTION TO DISMISS**

Came for consideration the motion to dismiss filed by defendant JAVIER MONTANA-PANDO on May 9, 2014. Upon consideration of the motion and the government's response, the Magistrate Judge is of the opinion defendant's motion to dismiss should be DENIED.

Defendant admits his Commerce Clause challenge is foreclosed by Fifth Circuit precedent, as stated in *United States v. Alcantar*, 733 F.3d 143, 146 (5th Cir. 2013), and that the motion is being filed to preserve the issue for further review.

Consequently, defendant's motion should be DENIED.

**RECOMMENDATION**

It is the RECOMMENDATION of the United States Magistrate Judge to the United States District Judge that the motion to dismiss filed by defendant JAVIER MONTANA-PANDO be DENIED.

**INSTRUCTIONS FOR SERVICE**

The United States District Clerk is directed to send a copy of this Report and

Recommendation To Deny Defendant's Motion to Dismiss to each party by the most efficient means available.

IT IS SO RECOMMENDED.

ENTERED this 2nd day of June 2014.

  
CLINTON E. AVERITTE  
UNITED STATES MAGISTRATE JUDGE

**\* NOTICE OF RIGHT TO OBJECT \***

Any party may object to this Report and Recommendation. *See* 28 U.S.C. § 636. In the event parties wish to object, they are hereby NOTIFIED that the deadline for filing objections is fourteen (14) days from the date of filing as indicated by the "entered" date directly above the signature line.

Any such objections shall be made in a written pleading entitled "Objections to the Report and Recommendation." Objecting parties shall file the written objections with the United States District Clerk and serve a copy of such objections on all other parties. A party's failure to timely file written objections to the proposed findings, conclusions, and recommendation contained in this report shall bar an aggrieved party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings, legal conclusions, and recommendation set forth by the Magistrate Judge in this report and accepted by the district court. *See Douglass v. United Services Auto. Ass'n*, 79 F.3d 1415, 1428-29 (5th Cir. 1996) (en banc), *superseded by statute on other grounds*, 28 U.S.C. § 636(b)(1), *as recognized in ACS Recovery Servs., Inc. v. Griffin*, 676 F.3d 512, 521 n.5 (5th Cir. 2012); *Rodriguez v. Bowen*, 857 F.2d 275, 276-77 (5th Cir. 1988).